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MICHIGAN HOUSE OF REPRESENTATIVES

MARTIN HOWRYLAK

STATE REPRESENTATIVE

To: Chair Andrea LaFontaine and members of the House Natural Resources Committee

From: State Representative Martin Howrylak

Re: House Bill 4550

Please accept this as my written testimony in opposition to the current version of HB 4540.

Our American republic requires open and transparent government. Indeed, our democratic republic is of the people, by the people and for the people. Thus, our default response should always be that the public has a right to know. It is only when there is clear and compelling reasons that the people's government should seek to block the public from accessing information. Such a process has long been the case in Michigan with our Open Meetings Act and Freedom of Information Act. It is with that knowledge and with the intent to protect the public's right to information that one should approach this bill.

HB 4540 seeks to address two perceived issues: (1) Cybersecurity threats; and (2) Potential threats to critical energy infrastructure, particularly with respect to potential acts of terror. To that end, the bill generally does a decent job of addressing the first issue, although I would strongly encourage this committee to tighten up the language in the bill. The definitions in sections 2 (A) and 2 (Z) in particular should be reviewed in detail. In their present form, there will no doubt be negative unintended consequences. Our legislative review, through committees and dual chamber votes, as well as gubernatorial review should no doubt seek to mitigate any negative effects of legislation such that the benefits are greater than the drawbacks. Such an analysis should necessarily include consideration of unintended consequences.

With that in mind, why would we want to use the overly broad language that this version of the bill uses? For example, section 2(Z) says:

Information that would identify or provide a means of identifying a person that may, as a result of disclosure of the information, become a victim of a cybersecurity incident or that would disclose a person's cybersecurity plans or cybersecurity-related practices, procedures, methods, results, organizational structure, hardware, or software.

This is so broad that nearly anybody doing anything could be swept up. Think about it. Information that would provide a means to identify somebody who may do something. The pretty much defines all information. Again, please take a look at this language and seek to sharpen its focus. I hope that you, too, can see how vague and broad it is. And this is but one example of the challenges that this version of HB 4540 presents.

With respect to the second item that the bill seeks to address, potential threats to critical energy infrastructure, I advise this committee that there is no need to reinvent the wheel. To that point, the issue is best addressed by harnessing language that already exists in federal statute. I therefore point your attention to the Homeland Security Act, in particular to 6 USC 131 (3). Indeed, I would suggest a review of all of the definitions as set forth in 6 USC 131. They are most pertinent to your review and consideration of HB 4540. For your ease, I have attached to this memo this section of the US Code.

With this said, I have drafted a substitute bill that seeks to address the two stated issues that the bill seeks to remedy. This substitute is inspired by the federal Homeland Security Act, as well as state statutes in California, Indiana, Alabama and Pennsylvania. While it is labeled as the H-4 substitute, it would necessarily become the H-9 substitute since your working version of the live bill is H-8. This substitute that I have prepared is a simple and clean way of addressing the stated problems that the status quo apparently presents. It does so in a balanced way that protects the public's right to access government records, absent a defined clear and compelling government interest in withholding such information.

Please do not hesitate to contact me should you wish to review HB 4540 or my proposed substitute in more detail.